GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 34 jurisdictions worldwide

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Cyprus

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Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

'Corporate governance' is not defined in Cypriot legislation. In general, corporate governance is derived from the relevant provisions of the Companies Law (as amended), the Cyprus Securities and Stock Exchange Law of 1993 (as amended), the Cyprus Securities and Exchange Commission Law of 2009, the Law Providing for Transparency Requirements of 2007 (as amended), and the Investment Services and Activities and Regulated Markets Law of 2007 (as amended). More specifically, the source of corporate governance standards is the Corporate Governance Code (the Code) issued by the Council of the Cyprus Stock Exchange (CSE).

The legal basis of Cypriot corporate governance

The Council of the Cyprus Stock Exchange, acting within the powers granted to it by the Cyprus Securities and Stock Exchange Law 1993 (as subsequently amended), has issued Regulation No. 326/2009, which provides for various obligations of companies whose securities are or are to be listed on the CSE. The said regulation imposes, inter alia, an obligation on listed companies to observe the provisions of the Code. The Code (now in the form of its third amendment) is schedule III of this regulation.

In accordance with Regulation No. 326/2009, the Code applies fully to the companies that are listed in the main market, the major projects market and the shipping companies market of the CSE and partly (only the provisions of sections B3.1 and C3 of the Code apply) to the companies listed in the parallel market. The rest of the companies listed on the CSE may apply the Code voluntarily, with the exception of section B3.1, which must be adhered to by all companies listed on the CSE.

In accordance with the Code, every listed company has an obligation to include in its board of directors' annual report to shareholders, a report on corporate governance as follows: the company should state in the first part of the report whether the principles of the Code are being implemented. The company should confirm in the second part of the report that it complies with the principles of the code and, in the event that it does not, should give explanations as to why not.

There is no other piece of legislation applying to all listed companies having provisions analogous to those of the Code as described below. The Code does not apply to private limited companies whose corporate governance stems mainly from the relevant provisions contained in the articles of association of each company and from the Companies Law.

The Corporate Governance Code

The aim of the Code is to strengthen the monitoring role of the board of directors, to protect small shareholders, to adopt greater transparency and to provide timely information, as well as to sufficiently safeguard the independence of the board of directors in its decision-making.

Furthermore, the Code aims to achieve conformity of listed companies with internationally accepted rules of corporate governance as they are widely applied by both individual and institutional investors in the selection of listed securities and the creation of investment portfolios internationally, and therefore establishes regulatory indicators of compliance with desirable rules of corporate governance.

2 Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups or proxy advisory firms whose views are often considered?

The primary bodies responsible for the Code and its enforcement are the CSE and the Cyprus Securities and Exchange Commission (CYSEC).

The Code is issued by the Council of the CSE, which is also responsible for its monitoring and amendments. A specific committee has been established regarding the Code. Representatives from the CSE, the CYSEC, the investors and the members of CSE take part in this committee. However, this committee is unofficial and the responsibility of monitoring and amending the code remains with the Council of the CSE.

Under CYSEC Directive No. 190-2007-04 (CYSEC Directive), the report of the board of directors of all issuer companies, which is a part of the annual financial report, should contain a corporate governance statement (as a special section of that board of directors' report).

The corporate governance statement should contain at least the following:

- reference to the corporate governance code to which the issuer is subject (if any) and details as to where this document is available to the public;
- reference to the code of corporate governance which the issuer has voluntarily decided to apply and details as to where this document is available to the public; or
- reference to any relevant information for any extra practices of corporate governance that the issuer applies in addition to the corporate governance code.

Clause 6 of the CYSEC Directive provides that the statutory auditors of the issuer should, inter alia, check and make a specific statement as to whether the issuer has made a corporate governance statement regarding the above.

The CYSEC Directive also provides that the corporate governance statement should include the following:

- a description of the main characteristics of the systems of internal control and risk management of the issuer in relation to the composition, preparation and drafting of the periodic financial reports;
- a list of every person known to the issuer who directly or indirectly holds a substantial interest in the issuer;
- the holder of the issuer's securities of every kind that provide special control rights and description of such rights;
- any restrictions on voting rights;
- the rules regarding the appointment and removal of the members of the board of directors of the issuer, and the rules regarding the amendment to the articles of association of the issuer;
- the powers of the members of the board of directors of the issuer, especially as regards the power to issue or redeem shares of the issuer;
- if an issuer has not been incorporated under Cypriot company law, information about the calling, operation and powers of the general meeting of shareholders, as well as a description of the shareholders' rights and the method of their enforcement; and
- the composition and the way of operation of the management, administrative and supervisory bodies of the issuer and their committees.

Enforcement

It should be noted that non-conformity with the CYSEC Directive would cause the issuer to suffer an administrative fine imposed by the CYSEC.

The CYSEC Directive aims to provide information, not enforce compliance with any code. The aim of the CYSEC Directive is to pressure companies to provide information regarding their corporate governance practices so as to help shareholders and investors in their investment decisions. The CYSEC will not review the quality of justifications given in the 'comply or explain' section of the CYSEC Directive.

The Council of the CSE, with the consent of the CYSEC, may impose administrative fines on any company for breach of the provisions of the Code. The administrative fine is imposed on the issuing company.

If the Code is applicable to the specific company that wishes to be listed on the CSE (depending on the CSE market), the CSE will not permit such listing if the provisions of the Code are not abided by. Although the Code provides for the possibility to 'comply or explain', if the company does not comply, the explanation given should be substantial for it to be accepted by the CSE. If the CSE is not satisfied, it will grant a grace period for the company to comply with the Code, and thereafter it shall take action, including the classification or transfer of the titles of the company in another regulated market.

Both the current version of the Code and the CYSEC Directive are very recent developments, hence a more elaborate analysis will be made possible through time.

The Pancyprian Investors Association (PASEHA) is an association whose purpose is to voice small investor's concerns with the governmental authorities and parliament.

The responsibility of enforcement of various provisions of the Companies Law also falls on the Registrar of Companies and Official Receiver, a governmental authority (under the Ministry of Commerce, Industry and Tourism) responsible, inter alia, for the registration, public records and striking off of companies.

The rights and equitable treatment of shareholders

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

Section A5 of the Code provides that all directors should resign at regular intervals and at least every three years. If they wish, they can submit themselves for re-election. All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.

Removal of directors is governed by the Companies Law. In accordance with section 178 of the Companies Law, a company may, by ordinary resolution, remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting. On receipt of notice of an intended resolution to remove, under this section the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

In accordance with standard Table A articles, the business of the company shall be managed by the directors. Subject to their power to remove directors, shareholders may not intervene in the board of directors' decisions.

4 Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The Companies Law provides that certain matters shall be decided by the shareholders (please note that certain decisions of the shareholders must be further sanctioned by a court). The most important of these are the following:

- change of name (75 per cent majority);
- alteration to the memorandum of association (75 per cent majority);
- alteration to the articles of association (75 per cent majority);
- variation of class rights (provided that there are different classes of shares) (75 per cent majority);
- increase of authorised share capital (50 per cent+1 majority);
- reduction of share capital (75 per cent majority);
- denomination of share capital (50 per cent+1 majority);
- issue of shares at a discount (only for private companies) (50 per cent+1);
- winding-up of the company (75 per cent majority);
- making the liability of directors unlimited (75 per cent majority);
- removal of directors (50 per cent+1 majority) ;
- appointment and removal of auditors (50 per cent+1 majority);
- assignment of the office of a director or other officer (75 per cent majority);
- power of the liquidator to transfer or sell the business or property (75 per cent majority); or
- continuation of a company in another country or jurisdiction (75 per cent majority).

Cypriot law does not provide for non-binding shareholder votes.

5 Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

It is possible to have classes of shares with varied rights, including variations upon their voting rights. In accordance with section 69A of the Companies Law, the shareholders of a public company that are of the same class shall be treated equally by the company. Contrary provisions in the articles or the memorandum or the decisions of the general meeting shall be void. A public offer of a listed company is regulated by the Public Offer and Prospectus Law of 2005 according to which such varied rights will have to be described in a prospectus which will be subject to the approval of the CYSEC.

6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

Any shareholder holding a share with voting rights has a right to be properly notified of an upcoming general meeting of the company. Such a shareholder may attend and vote in such meeting. The right to attend and vote at a meeting may be exercised through the shareholder's representative (proxy) so appointed as provided by the company's articles of association.

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

In accordance with section 126 of the Companies Law, notwithstanding any contrary provisions of the articles, holders of at least 10 per cent of the paid capital of the company with a right to vote may request that the directors call a general meeting by submitting a written request to the company's registered office, signed by all requisitionists and specifying the purpose of the meeting. If the directors do not call a meeting within 21 days of such request, then the requisitionists may call it themselves, with such a meeting to take place within three months from the date of the initial request.

8 Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

In accordance with common law precedent, there is no obligation upon shareholders to vote for the benefit of the company as a whole. A shareholder may vote for his or her own benefit (provided that there is no shareholders' agreement in place which provides otherwise).

9 Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

In accordance with the principles of limited liability and separate legal personality applicable on Cypriot companies, the company and its officers (directors and secretary) are wholly responsible for the company's actions or omissions. If the company is insolvent, the liability of shareholders to contribute to the debts of the company is limited to the amount (if any) unpaid on the shares held by them.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

Following the implementation of Directive No. 2004/25/EC, transposed in Cyprus under the Takeover Bids Law of 2007 (as subsequently amended), the right of squeeze-out was introduced in Cyprus. In accordance with section 36(1) of this law: where the offeror holds securities in the offeree company representing not less than 90 per cent of the capital carrying voting rights and not less than 90 per cent of the voting rights in the offeree company; or where the offeror has acquired or has irrevocably agreed to acquire, following the acceptance of a takeover bid, securities in the offeree company representing not less than 90 per cent of the capital carrying voting rights and not less than 90 per cent of the voting rights included in the takeover bid, he or she is able to require all the holders of the remaining securities to sell to the offeror those securities, for a consideration at least equal to the one offered in the bid.

The holders of securities of the offeree company, which are the subject of exercise of the squeeze-out right, may initiate legal proceedings against the offeror within six months from the date of the above announcement to dispute the amount of the consideration offered. It should be noted, however, that such legal proceedings will not prevent completion of the transfer of shares.

Additionally, section 201 of the Companies Law provides that, where a company acquires not less than 90 per cent of share capital in a company, it may give notice to dissenting shareholders to acquire their shares at the same price unless a dissenting shareholder applies to court and persuades the court not to permit this.

11 Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Yes. The board of directors may allot shares of the company without prior shareholder approval. Shares shall be offered pro rata to the existing shareholders of the company prior to being offered to third parties.

12 Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted, and if so what restrictions are commonly adopted?

In accordance with section 29 of the Companies Law, the articles of association of a private company should restrict the right of shareholders to transfer their shares (this right may be freely exercised in public companies). Such restriction usually takes the form of pre-emption rights (shares to be offered first to the current shareholders).

13 Compulsory repurchase rules

Are compulsory share repurchase rules allowed? Can they be made mandatory in certain circumstances?

Compulsory repurchase of shares is not common. In accordance with Table A provisions, if a member fails to pay any call, the directors may serve a notice on him or her requiring payment of the unpaid call amount and if such amount remains unpaid thereafter, the shares of that member may be forfeited by resolution of directors.

14 Dissenters' rights

Do shareholders have appraisal rights?

Yes. The shareholders do have such rights.

In accordance with section 37 of the Takeover Bids Law (as amended), in any of the cases referred to in section 36(1), (see question 10) the holder of the remaining securities of the offeree company is able to require the offeror to buy his or her securities from him or her at a fair price. The consideration for the acquisition of securities shall take the same form as the consideration offered in the bid or there will be a cash alternative.

Additionally, section 201 of the Companies Law provides that where a company acquires not less than 90 per cent of share capital in a company, holders of remaining shares may within three months from the relevant notification given to them demand that his or her shares are also acquired on the same terms and consideration already provided.

The responsibilities of the board (supervisory)

15 Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

Board structure is best categorised as one-tier. Section A1 of the Code provides that every company should be headed by an effective board of directors, which should lead and control the company.

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

Responsibilities and powers of the directors are prescribed by the company's articles, Table A and the Companies Law. Paragraph 80 of Table A (a paragraph commonly adopted by companies) provides that the business of the company is managed by the directors. In this respect, directors exercise all powers and bear all responsibilities of the company except from those that are prescribed by law to be exercised by the members in a general meeting.

17 Board obligees

Whom does the board represent and to whom does it owe legal duties?

The company, being a legal (artificial) person, acts through and is represented by its board of directors. The board of directors owe their duties to the company as a whole and not to specific shareholders directly. Directors' duties include the following:

- directors hold a fiduciary position towards the company and have the duty to:
  - act in good faith (bona fide) for the benefit of the company. This duty is subjective as to what the director believed to be in the best interests of the company and is owed towards the shareholders, creditors and employees of the company;
  - use their powers for the purpose for which those powers were conferred;
  - avoid conflict of interest (such a conflict must be disclosed to the rest of the board);
  - avoid secret profits from their personal exploitation of the company's property, information or opportunities; and
  - not compete with the company; and
- directors should exercise care and skill in performing their responsibilities. Therefore, directors are expected to act as reasonably diligent persons having both the general knowledge, skill and experience reasonably expected from a person carrying out the same functions as are carried out by that director in relation to the company; and the general knowledge, skill and experience that that director has.

18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

The directors owe their duties to the company as a whole. The company is the proper plaintiff and as such is responsible for bringing an action against any director who is in breach of any of his duties. However, there is an exception to the above rule. The Supreme Court held that a derivative action by a minority member will be allowed where the wrongdoer is in control of the company and prohibits it from taking legal action in cases involving actions that:

- are ultra vires to the objects of the company;
- need special majority;
- breach the personal rights of a specific shareholder; or
- constitute a fraud on the minority.

In accordance with section 311 of the Companies Law:

If in the course of the winding-up of a company it appears that any business of the company has been carried on with an intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

In accordance with section 312 of the Companies Law:

If in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, the liquidator, or any creditor or contributory, examine the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

19 Care and prudence

Do the board's duties include a care or prudence element?

Yes. Please see question 17.

20 Board member duties

To what extent do the duties of individual members of the board differ?

As explained in question 17, the standard of care and skill expected from each director is both objective as to what would be expected from a reasonably diligent person in the office of director, and subjective as to the knowledge, skill and experience that the specific director in question possesses. Therefore, if a director possesses knowledge and experience relevant to his or her office in that company, a higher standard will be applied.

21 Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

As already stated above, the authority to exercise the company's powers fall on the board as a whole. However, provided that this is permitted by the articles, delegation to a committee of directors, the managing director, individual directors or to other officers of the company is possible.

Section A1.2 of the Code provides that the board of directors should have a formal schedule of matters specifically reserved for its decision. The degree of issues being exclusively reserved for the board of directors for decision-making, as stipulated in section A1.2 of the Code, should be communicated to the company's executive management.

It should be noted that, in accordance with the Code, the board of directors should function on the basis of the principle of collective responsibility and no category of its members should absolve itself from the responsibility towards another category. However, some directors – executive or non-executive – may undertake special responsibilities as regards specific issues for which they are accountable to the board of directors as a body. Irrespective of these special responsibilities assigned to some of its directors, the board of directors is responsible, as a whole, for carrying out its duties.

22 Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

In accordance with section A2 of the Code, the board of directors should include a sufficient number of non-executive directors with sufficient abilities, knowledge and experience, so their opinions carry significant weight in the board's decision-making. Regarding the board of directors of companies not listed on the CSE's main market or on the major projects market or on the shipping companies market, non-executive directors should comprise no less than one-third of the board and the majority of non-executive directors, or at least two persons, should be independent

For the larger companies, listed either on the CSE's main market or on the major projects market or on the shipping companies market, at least 50 per cent of the members of the board of directors, excluding the chairman, should comprise independent non-executive directors. If the 50 per cent criterion is not met, at least one-third of the board should be independent non-executive directors and companies should give a relevant explanation in the second part of the report requesting from the Council of the CSE to be given time for compliance with the 50 per cent minimum. The CSE Council may give a reasonable time period for their compliance, but this extension will not exceed 12 months.

Every independent non-executive director should meet the following minimum requirements:

- he or she should not have any business or close family ties (up to the first degree) or have an employer–employee relationship with other executive members of the board of directors or with a shareholder who directly or indirectly controls the majority of the company's share capital or voting rights, which could (significantly) affect his or her independent and unbiased judgement;
- he or she should not have any other material relationship with the company which, by its nature, may affect his or her independent and unbiased judgement and, in particular, he or she should not be a supplier of goods or a provider of services, which, by their nature, significantly affect his or her independent and unbiased judgement, nor should he or she be a member of a company that is an adviser to the company. Additionally, directors will not be independent if either personally or their spouse, children (minors), parents as well as companies in which they possess more than 20 per cent of the share capital and in which they exercise substantial control, have loans or guarantees with the company, which in total exceed €500,000;
- he or she should not be an executive managing director or executive member of the board of directors of a directly or indirectly associated or subsidiary company presently or during the past 12 months;
- he or she should not have been an employee of the company or of the group of companies within the past five years;
- he or she should not have nor have had within the past three years any material business relation with the company, either directly, or as a partner, shareholder, director or senior employee of an organisation that has a business relationship with the company, which could, by its nature, affect his independent and unbiased judgement;
- he or she should not have any business relationship or close family ties with any of the company's advisers;
- he or she should not hold cross-directorships or have significant links with other directors through involvement in other companies or bodies;
- he or she should not serve on the board of directors for more than nine years from the date of his or her first election; and
- as regards companies where the government is the main shareholder, the following persons shall not be deemed to be independent: executive directors, ministers, members of the house of representatives, members of municipal councils or other local authorities, religious officers, civil servants and members of the armed forces or of the security forces of the republic.

The board should identify in the annual report each non-executive director it considers to be independent and the independent directors should sign an independence statement affirming that they abide with the above criteria. In those situations where the board considers a director as independent, even if not all provisions regarding independence are met, the board should give an extensive explanation in its annual report concerning corporate governance as to the reasons for which the director is considered to be independent.

The board of directors should appoint one of the independent non-executive directors to be the senior independent director. The senior independent director should be available to shareholders who have concerns that failed to be resolved through the normal channels.

23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The Code requires a formal and transparent procedure for the appointment of Directors. The Code also specifies the percentage of executive and non-executive directors that have to be appointed to the board depending on where the company is listed. For the criteria of non-executive and independent directors please see question 22.

Neither the Code nor the Companies Law contain any specific criteria relating to age, nationality, diversity or expertise. However, a director who is an undischarged bankrupt cannot act as a director and will be liable to a penalty of imprisonment or fines or both if such a person is acting as a director without the permission of the court. Any person convicted of an offence connected to his or her role as director of a company may be ordered by the court to refrain from participating in the management of a company for up to five years.

24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The Code provides that the roles of chairman of the board of directors and CEO should not be exercised by the same individual. The division of responsibilities between the chairman and CEO should be clearly established, set out in writing and agreed by the board. If these positions are not separate, there should be a relevant explanation in the second part of the annual corporate governance report.

25 Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

The Code provides for the establishment of three committees of the board of directors, namely the nomination committee, the remuneration committee and the audit committee. When the board of directors of each company, given the particularities thereof, considers it expedient to establish more committees, it may proceed therewith.

The nomination committee should lead the process for board appointments and make recommendations to the board of directors. A majority of the members of this committee should be non-executive directors and its chairman should be either the chairman of the board of directors or a non-executive director.

The remuneration committee, consisting exclusively of non-executive directors, should make recommendations to the board, within agreed terms of reference, on the executive directors' context and level of remuneration and determine on their behalf specific packages for each of the executive directors, including pension rights and any compensation payments. The majority of the members of the remuneration committee should be independent and separate from management and free from any business or other relationship that could materially interfere with the exercise of their independent and unbiased judgement.

The audit committee should consist of at least two non-executive directors, the majority of whom should be independent. The chairman of the committee should have experience in accounting or financial policies. The duties of the audit committee should include a proposal to the board of directors as regards the appointment, termination and remuneration of the company's auditors, and keeping under continuous review the scope and results of the audit and its cost-effectiveness and the independence and objectivity of the auditors.

26 Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The Companies Law does not specify a minimum number of board meetings. The Code provides that the board of directors should meet regularly, at least six times a year.

27 Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

The Code provides that the names of members of the three mandatory board committees as described in question 25 should be published in the annual report of the company's directors. The members of the remuneration committee should be listed each year in the board's remuneration report to shareholders.

28 Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

The Code provides that the remuneration committee should make recommendations to the board on the executive directors' remuneration and determine on their behalf specific packages for each of the executive directors, including pension rights and any compensation payments.

The remuneration of directors, in their capacity as members of the committees of the board of directors, should be determined by the board itself and should be in accordance with the time they devote to the affairs of the company, taking into account the remuneration of other directors, other employees of the company and, in cases where part of the remuneration is connected with performance criteria, such criteria should be based on the long-term viability of the company and the need to foster the long-term value of the company. The remuneration of directors, in their capacity as members of the board of directors, should be approved by the shareholders at a general meeting. The remuneration committee should give the chairman and CEO the opportunity to express their views as regards its proposals for the remuneration of other executive directors and should also have access to professional advice inside and outside the company. In determining the remuneration of directors, the remuneration of non-executive directors should not be linked to the performance of the company and should not contain share purchase options.

The Code advises the board of directors to set fixed employment contracts that do not exceed five years and reduce the notice period of indefinite contracts to one year or less. The board of directors should set this as an objective, although it is acknowledged that it may not be possible to achieve it immediately. Furthermore, the employment contracts of directors should include provisions allowing the company to recover variable rewards that were awarded based on facts subsequently shown to be inaccurate.

Subject to the provisions of section 182 of the Companies Law, any loans granted and any guarantee provided to directors of the company or of the subsidiaries or affiliated companies either by the company itself or by such subsidiaries or affiliated companies, as well as any receivables from a company in which a director or a person related to him or her is involved, should be stated in the company's report on corporate governance, or through reference to its accounts. This provision (subject to certain qualifications) does not apply in the case of banks or other financial institutions.

It is noted that any reference to a director should include the persons related to him or her up to the first degree, the spouse as well as the companies in which he or she holds more than 20 per cent of voting rights.

Furthermore, the Code stresses the responsibility of the director to make suitable enquiries in order to establish whether any transactions have been made in relation to him or her and proceed with a relevant declaration to the company.

29 Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

Not applicable.

30 D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Companies may pay a premium for directors' liability insurance subject to the provisions of section 197 of Companies Law, which provide that no indemnification or relief may be provided by the company to its director.

31 Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Indemnification of directors or other officers of a company is generally not permitted. Section 197 of Companies Law provides that, subject to the following proviso:

Any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer of the company or any person, whether an officer of the company or not, employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void, provided that:

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 383 in which relief is granted to him by the court.

32 Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

Please see question 31.

33 Employees

What role do employees play in corporate governance?

As already stated above, Cypriot companies are governed by a one-tier board. Employee participation in corporate governance is not prescribed by statute or the Code.

Disclosure and transparency

34 Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

The memorandum and articles of association of the companies are filed and registered with the registrar of companies and they are open to be inspected by the public, subject to payment of a nominal fee.

35 Company information

What information must companies publicly disclose? How often must disclosure be made?

In accordance with the Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law of 2007 (as amended) and subject to the specific provisions and qualifications of this law, issuers must disclose periodic and ongoing information to investors and shareholders.

Section 9 provides that issuers should publish their annual financial reports within four months after the end of each financial year. This report must remain available to the public for at least five years. Section 10 provides that every issuer of shares or debt securities should disclose, as soon as possible, a half-yearly financial report covering the first six months of the financial year and at the latest, within two months after the end of the first six months of the financial year. This report must remain available to the public for at least five years.

Section 11 provides that every issuer of shares should disclose an interim management statement during both six-month periods of the financial year. This statement must be prepared and disclosed in a period between 10 weeks after the beginning and six weeks before the end of the relevant six-month period.

Section 13 provides that every issuer should disclose, as soon as possible and at the latest within two months from the end of the period relevant to the annual financial reports, an indicative result (net gain or loss after tax) for the full financial year.

The above law further provides for ongoing responsibility for disclosure of certain information by the issuer, including the following:

- disclosure of acquisition or disposal of own shares;
- disclosure of total number of voting rights and capital;
- disclosure of notification of the acquisition or disposal of voting rights;
- communication of proposed draft amendment of instruments of incorporation or statutes;
- disclosure of change in rights attached to shares or other securities; and
- disclosure of new loan issues.

In accordance with the Companies Law, the following information should be filed (and kept up to date) with the registrar of companies and hence, become public: details of the authorised and issued capital of the company, directors and secretary, shareholders, registered office of the company, mortgages and charges.

Moreover, the company should annually file with the registrar of companies: an annual return recording any changes in the affairs of the company and its financial statements prepared in accordance with IFRS (containing director's and auditor's reports).

Hot topics

36 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

As already stated above, the Code provides that a remuneration committee of the board of directors should be established for the purposes of determining the remuneration of the executives.

In accordance with the Code, the shareholders' role in relation to such remuneration is as follows:

- the members of the remuneration committee should be listed each year in the board's remuneration report to shareholders;
- if any share options are to be provided to directors under any schemes, such schemes should only be adopted following the approval of an extraordinary general meeting of the company's shareholders;

Update and trends

In March 2011, the CSE's Corporate Governance Code (3rd Edition) was updated with various amendments. These amendments were focused on the sections of the code relating to the remuneration of directors and were designed to strengthen the supervisory role of the board of directors in listed companies. The main aim of these amendments appears to be a desire to increase the independence and transparency of the Remuneration Committee, while also giving the Remuneration Committee provisions to reclaim remuneration given based on facts later shown to be inaccurate.

Provisions were added bringing director remuneration more into line with the general level of remuneration of a company's employees (perhaps as a result of the current financial crisis and the general climate against large bonus schemes for directors) and also adding sections requiring regular reconsideration of the rewards policy.

CSE Regulation 326/09 now makes it compulsory for all issuing companies, with the exception of companies on non-regulated markets, to apply the provisions of section B.3.1. of the Code. Section B.3.1, inter alia, sets out requirements that the remuneration of directors must be individually broken down into information as regards salary and variable income such as bonuses, share options, etc. This is done with the aim of achieving full transparency as regards the remuneration of directors.

It should be noted that the above-mentioned latest amendments of the CSE Corporate Governance Code (relating to director remuneration) and their implementation and effect will be reflected for the first time in the annual reports prepared by the board of directors and filed in April 2012.

- the board of directors should submit a remuneration report to the company's shareholders each year. This report should form part of or be annexed to the company's annual report. It should be the main vehicle through which the company reports to shareholders on directors' remuneration; and
- the said report should point out factors that especially concern the company and should be submitted to the annual general meeting of shareholders for voting.

Additionally, section 188 of the Companies Law provides that, in any accounts of a company laid before it in general meeting, there shall, subject to certain qualifications, be shown so far as the information is contained in the company's books and papers or the company has the right to obtain it from the persons concerned:

- the aggregate amount of the directors' emoluments;
- the aggregate amount of directors' or past directors' pensions; and
- the aggregate amount of any compensation to directors or past directors in respect of loss of office.

37 Proxy solicitation

Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

A director may be appointed by a simple majority vote at an annual or extraordinary general meeting of the company. Such a meeting may be called by the board of directors or by the shareholders themselves, as described in question 7.

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